

FEDERAL LAWS AND HOMEOWNERS ASSOCIATIONS

This brief summary is intended to acquaint homeowners with the major federal laws that affect the operation of homeowner associations.

Department of Labor

- **The Fair Labor Standards Act (FLSA)** prescribes standards for wages and overtime pay, which affect most private and public employment. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay.
- **The Occupational Safety and Health Act (OSH)** is administered by the Occupational Safety and Health Administration (OSHA). Safety and health conditions in most private industries are regulated by OSHA or OSHA-approved state systems, which also cover public sector employers. Employers also have a general duty under the OSH Act to provide work and a workplace free from recognized, serious hazards. OSHA enforces the Act through workplace inspections and investigations.
- **The Employee Retirement Income Security Act (ERISA)** regulates employers who offer pension or welfare benefit plans for their employees. Title I of ERISA is administered by the Pension and Welfare Benefits Administration (PWBA) and imposes a wide range of fiduciary, disclosure and reporting requirements on fiduciaries of pension and welfare benefit plans and on others having dealings with these plans. PWBA also administers reporting requirements for continuation of health-care provisions, required under the **Comprehensive Omnibus Budget Reconciliation Act** of 1985 (COBRA).
- **The Family and Medical Leave Act** administered by the Wage and Hour Division, the law requires employers of 50 or more employees to give up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.

Equal Employment Opportunity Commission

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

Federal Communications Commission

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multi channel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS"). It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal. On October 25, 2000, the Commission further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001. The rule applies to viewers who place antennas that meet size limitations on property that they own or rent and that is within their exclusive use or control, including condominium owners and cooperative owners, and tenants who have an area where they have exclusive use, such as a balcony or

patio, in which to install the antenna. The rule applies to town homes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair the installation, maintenance or use of the types of antennas described above, as well as restrictions needed for safety or historic preservation. In addition, under some circumstances, the availability of a central or common antenna can be used by a community association or landlord to restrict the installation of individual antennas. In addition, the rule does not apply to common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners. Such common areas may include the roof or exterior wall of a multiple dwelling unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable.

The Fair Debt Collection Practices Act

It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

The Fair Housing Act

Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older, and
- the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

- the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall provide for verification by reliable surveys and affidavits

Federal Bankruptcy Act

Major changes in the federal bankruptcy laws will benefit community associations in collecting assessments. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("2005 Bankruptcy Act") establishes the most comprehensive bankruptcy law revisions in nearly 30 years.

Prevention of Bankruptcy Abuse

The new bankruptcy law makes it more difficult for individuals to eliminate personal obligations to pay debts through a chapter 7 bankruptcy. By establishing an income/expense-based "means" test, fewer people will qualify to file a chapter 7 bankruptcy and will only be eligible for a chapter 13 bankruptcy. In a chapter 13 bankruptcy, all or part of the debt is typically repaid in 3 to 5 years.

The 2005 Bankruptcy Act also increases the amounts debtors pay in a chapter 13 bankruptcy so associations will receive more of the pre-bankruptcy assessments than in the past.

Community Association Assessments

The 2005 Bankruptcy Act also includes a specific provision which aids community associations in collecting assessments which are due after a chapter 7 bankruptcy is filed. An individual will continue to be responsible for payment of condominium, cooperative and homeowner association assessments for so long as the individual or bankruptcy trustee has a legal, equitable, or possessory ownership interest in the property.

Previously, a chapter 7 debtor was not liable for post-bankruptcy condominium or cooperative assessments if he no longer occupied the dwelling or received rent from leasing it.

The 2005 Bankruptcy Act applies to any bankruptcy filed after October 16, 2005.

Individuals with Disabilities Act

The United States Department of Housing and Urban Development ("HUD") and Department of Justice ("DOJ") have issued a joint statement on the provisions of the Fair Housing Act ("Act") which require housing providers to make **reasonable accommodations to individuals with disabilities**.

One type of disability discrimination prohibited by the Act is the refusal to make "reasonable accommodations" in rules, policies, or practices or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, including public and common use spaces. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice or service. The joint statement issued by HUD and DOJ provides guidance on how to respond to requests for accommodations.

References:

Department of Labor (www.dol.gov)

Equal Employee Opportunity Commission (www.eeoc.gov)

Federal Communications Commission (www.fcc.gov)

Housing and Urban Development (www.hud.gov)

Federal Trade Commission (www.ftc.gov)

Department of Education (www.ed.gov)

Department of Justice (www.justice.gov)